

Spl. Civil Suit No. 64/2023
Annapurnabai Vs. Prakash

ORDER BELOW EXH. 33

(Passed on this 22nd of April 2025)

None has appeared for defendant Nos. 1,2,4 and 6 till 4.10 pm. Ld. Advocate for plaintiff is present. He has pressed the application Exh. 33 and has requested to reject it. He submits that there is no ground of delay mentioned in this application. Even defendants concern and their Ld. Advocate are not attending this matter for hearing on this application. In this background, I have taken this application for decision on merit.

2] Defendant Nos. 1,2,4 and 6 have filed this application seeking permission to file written statement and counterclaim and reply to interim injunction application. They submit that defendant No. 3 died on 19-02-2021. Defendant No. 5 died on 13-10-2010. Defendant No. 1 alone is well versed with the facts of this case and knows about the affairs of this case. Defendant No. 2, 4 and 6 are not well versed with the facts of this case. But, defendant No. 1 was suffering from heart disease. He had to undergo Angioplasty operation in Arneja Hospital, Nagpur. Due to this reason, there is delay in filing W.S. In fact, he received suit summons on 12-12-2023. Therefore, he should have filed W.S. on or before 12-03-2024. This application has been filed on 08-04-2024. Copy of proposed W.S. cum counter claim is annexed to this application.

3] Plaintiff has opposed the application by submitting that these defendants are already late in filing W.S. and no reason is mentioned for delay.

4] Question before me is whether defendant Nos. 1,2,4 and 6 can be allowed to file W.S. cum counterclaim as prayed ?

5] Record shows that defendant No. 1 received suit summonses for himself and for defendant Nos. 2, 4 and 6 on 12-12-2023. He appeared on 19-12-2023. Ld. Advocate Shri. C.S. Lahabar filed V.P. Exh. 20 for him. The same Ld. Advocate has filed Memo of Appearance for defendant Nos. 2,4 and 6 on the same date. Thereafter, V.P. Exh. 27 is filed by Shri. Lahabar for defendant Nos. 1,2,4 and 6 on

15-01-2024. Thus, these defendants having received suit summonses on 12-12-2023, should have filed their W.S. on or before 12-01-2024 or at the most 12-03-2024. However, they have filed this application on 08-04-2024. Thus, there is delay on their part in filing W.S. It is submitted in this application that defendant No. 1 alone is well versed with the facts and affairs of this suit land. But, since he was suffering from heart disease and had to undergo Angioplasty, W.S. could not be filed within time. This application has been solemnly affirmed by defendant No. 1. It is true that medical papers are not placed on record to support the above ground. However, since the contents of this application have been solemnly affirmed by defendant No. 1, such ground can be considered.

6] Main suit is for specific performance of agreement of sale of date 30-05-2002. Suit land appears to be in the possession of plaintiff. Alternative relief for damages is also claimed.

7] Copy of proposed W.S. cum counterclaim is annexed to this application. Perusal of it shows that these defendants have denied the plaint pleadings. In paragraph Nos. 1 to 10 of the W.S. and from paragraph No. 11 onward, they have put forth their counterclaim. Main prayer of the counterclaim is for cancellation of above agreement of sale of date 30-05-2002. Recovery of possession of the suit land is also claimed. Considering the nature of the main suit, I think that W.S. of these defendants if taken on record will facilitate the court to decide this suit effectively. Further, counterclaim also relates to the same agreement of sale which is the base of the main suit. Therefore, considering the application in the above background, I pass following order.

ORDER

Application seeking permission to file W.S. and counterclaim and reply to injunction application, is allowed with no order as to cost.

Umred.
Dated: 22/04/2025.

[S. G. Landge]
Civil Judge Sr. Dn., Umred,
Dist. Nagpur.

Certificate

I affirm that the contents of this P.D.F. file are word to word same as per original.

Name of Stenographer : Mrs. D.T. Vighne
Stenographer (Grade II)